

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CHERYL KATER and SUZIE KELLY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CHURCHILL DOWNS INCORPORATED, a
Kentucky corporation, and BIG FISH
GAMES, INC., a Washington corporation,

Defendants.

Case No.: 2:15-cv-00612-RBL

**DECLARATION OF LINDSEY
BARNHART IN SUPPORT OF
DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR RULE
23(d) PROTECTIVE ORDER**

MANASA THIMMEGOWDA, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington
corporation; ARISTOCRAT
TECHNOLOGIES INC., a Nevada
corporation; ARISTOCRAT LEISURE
LIMITED, an Australian corporation; and
CHURCHILL DOWNS INCORPORATED, a
Kentucky corporation,

Defendants.

Case No.: 2:19-cv-00199-RBL

**DECLARATION OF LINDSEY
BARNHART IN SUPPORT OF
DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR RULE
23(d) PROTECTIVE ORDER**

1 I, Lindsey Barnhart, hereby declare as follows:

2 1. I am an attorney at the law firm of Covington & Burling LLP. I am one of
3 the attorneys representing Defendants Big Fish Games, Inc., Aristocrat Technologies, Inc., and
4 Aristocrat Leisure Limited, in the above-captioned action. I make this declaration based on my
5 personal knowledge and, if called as a witness, I could and would competently testify thereto.

6 2. On January 31, 2020, my colleague Gary Rubman emailed Plaintiffs'
7 attorneys of record to seek information from Edelson regarding direct communications between
8 Edelson and putative class members that BFC users have reported. Counsel for the parties
9 exchanged multiple emails on the subject. Edelson did not answer Mr. Rubman's questions, and
10 instead responded that the "allegations" were "baseless," and that Edelson does not "cold call
11 putative class members, [or] spy on them either." Attached hereto as **Exhibit A** is a true and
12 correct copy of a chain of these email communications.

13 3. On February 11, 2020, I navigated to Edelson's public Facebook
14 advertisement at <https://www.facebook.com/edelsonlaw/posts/3717942974890016>. That
15 advertisement encourages putative class members to "Say No To Big Fish Arbitration" and
16 directs putative class members to Edelson's Opt-Out Website. According to Facebook's count of
17 user comments, approximately 1,000 comments have been posted on Edelson's Facebook
18 advertisement. A true and correct copy of Edelson's Facebook advertisement, Facebook's count
19 of user comments, and excerpts of the user comments is attached hereto as **Exhibit B**.

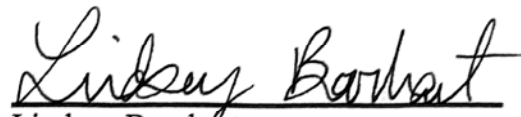
20 4. Approximately 300 of the comments on Edelson's Facebook
21 advertisement are posted by the same individual, Sara Brown. In her comments, Ms. Brown
22 states that she has spoken with attorneys at Edelson. *See Exhibit B* at 2. Examples of Ms.
23 Brown's comments regarding the litigation and putative class members' arbitration rights include
24 (1) "unless someone is a BILLIONAIRE they cannot possibly afford to arbitrate with big fish or
25 sue big fish independently"; (2) "BY AGREEING TO BIG FISH'S ARBITRATION CLAUSE
26 AND NOT OPTING OUT, ppl are eliminating themselves from ever . . . being able to fight big
27 fish and get any money back EVER!"; and (3) "Opting out means that you say 'even though I
28

1 clicked on accept' I don't really accept. It retains your legal rights that you would otherwise be
2 giving up [b]y clicking accept." See **Exhibit B** at 3, 5.

3 5. Other comments on Edelson's Facebook advertisement state that putative
4 class members who complete the opt-out form on Edelson's Opt-Out Website have subsequently
5 received other written correspondence from Edelson, including letters regarding Edelson's
6 lobbying activities in Washington state with respect to legislation targeted at Big Fish Games and
7 other social gaming companies. See **Exhibit B** at 4.

8 6. I understand that BFC users have continued to report receiving emails and
9 phone calls from attorneys regarding this litigation since Defendants' Motion was filed. One
10 user reported receiving a completed opt-out letter signed in her name, with the same content and
11 format as those produced from Edelson's Opt-Out Website, despite the fact that this user did not
12 want to sign any such letter. Another user reported receiving communications from a law firm
13 encouraging the user to opt out of the Big Fish Games Terms of Use dispute resolution
14 provision. Another user reported being contacted by a law firm regarding a class action suit
15 against Big Fish Games. Another user reported being contacted daily by attorneys, who
16 encouraged the user to be part of a class action.

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18 I declare under the penalty of perjury under the laws of the United States that the
19 foregoing is true and correct. This declaration is executed this 14th day of February,
20 2020, in Palo Alto, California.

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22 Lindsey Barnhart
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